

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICK J. GARDUNO, } No. C 02-5806 JSW (PR)
Petitioner, }
vs. }
GAIL LEWIS, Warden, } **ORDER DENYING PLAINTIFF'S
MOTION SEEKING
APPOINTMENT OF COUNSEL**
Respondent. }
(Docket no. 51)

Petitioner, a prisoner of the State of California currently incarcerated at California State Prison-Corcoran in Corcoran, California, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. On March 22, 2007, this Court granted Respondent's motion to dismiss claims two, three and four in the petition as untimely (docket no. 49). The Court also reinstated an earlier order for Respondent to show cause why the petition should not be granted (docket no. 29). On April 20, 2007, Petitioner filed a motion seeking appointment of counsel based on the fact that he is without counsel and that access to the prison law library is limited. Petitioner contends that the Court must provide counsel to an indigent prisoner who requests it.

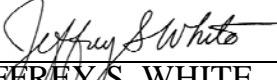
However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. § 3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." The decision to appoint counsel is within

1 the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.
2 1986), *cert. denied*, 481 U.S. 1023 (1987); *Knaubert*, 791 F.2d at 728.

3 Here, no evidentiary hearing appears necessary at this time. The Court concludes
4 that the interests of justice do not require appointment of counsel at this time.
5 Accordingly, Petitioner's motion for appointment of counsel (docket no. 51) is DENIED
6 without prejudice.

7 IT IS SO ORDERED.

8 DATED: May 3, 2007

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10 JEFFREY S. WHITE
United States District Judge

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